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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 07th August, 2019

+ LPA 510/2019

MODERN CHILD PUBLIC SR SEC SCHOOL Appellant

Through Mr. A.K. Trivedi, Mr. Naveen Kumar
& Mr. Piyush Sharma, Advocates.

versus

UMESH GAUBA & ANR Respondents

Through Mr. Anuj Aggarwal, Advocate for
R-1.
Ms. Mini Pushkarna, Ms. S. Bhuyan,
Ms. Shiva Pandey, Advocates for R-2
alongwith Mr. Deepak Kumar, LA,
Zone 17, Directorate of Education
(GNCTD).

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

CM Appl. 35297/2019 (delay in filing)

1. This application has been filed by the applicant/appellant seeking condonation of 36 days delay in filing the present appeal.
2. There is no opposition to the prayer made in the application. Accordingly, the same is allowed. Delay of 36 days in filing the present appeal is condoned.
3. The application stands disposed of.

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4. Challenge in this appeal is to the order dated 06.05.2019 passed by a Single Judge of this Court, by which a petition has been allowed

without issuing notice to the appellant/respondent no.1 school.

5. The ground urged by respondent no.1/petitioner before the learned Single Judge was that the order of suspension is illegal as no approval was granted by the Directorate of Education and thus, the suspension would stand lapsed in terms of Section 8(4) and Rule 115 of Delhi School Education Act and Rules, 1973.
6. Notice. Counsels for the respondents accept notice.
7. Mr. A.K. Trivedi, learned counsel appearing for the appellant submits that the learned Single Judge while allowing the writ petition issued a direction directing the respondents/appellant herein to pay full salary with consequential benefits to respondent no.1 w.e.f. 05.02.2019. Counsel further submits that this order could not have been passed without issuing notice to the appellant/school and without granting an opportunity of hearing.
8. Ms. Mini Pushkarna, counsel appearing for respondent no.2 informs the Court that respondent no.1 has since retired and a direction has been passed by the learned Single Judge for full payment of salary with consequential benefits to respondent no.1.
9. We have heard learned counsels for the parties. It is not in dispute that when the order dated 06.05.2019 was passed, respondent no.1/school was not representing nor notice has been issued whereas the relief was claimed against the school. We may also note that the learned Single Judge has quashed the order dated 05.02.2019, by which the petitioner/respondent herein was suspended, and directed respondents to pay full salary with consequential benefits to the petitioner. It seems that the counsels, who were appearing in the matter did not bring to

the notice of the learned Single Judge that the school was not represented/served.

10. Having regard to the fact that the learned Single Judge has passed an order directing the respondent (appellant herein) to pay full salary with consequential benefits without notice and without hearing the school, we are of the view that the order dated 06.05.2019 passed by the learned Single Judge of this Court is liable to be set aside. The matter shall be heard afresh by the learned Single Judge after hearing all parties.
11. Parties shall appear before the learned Single Judge on 19.08.2019.
12. Mr. Anuj Aggarwal, counsel appearing for respondent no.1 points out that even subsistence allowance has not been paid to respondent no.1.
13. Mr. Trivedi submits that in case the subsistence allowance has not been paid to respondent no.1, he would ensure that the same be paid.
14. In view of the above directions, the appeal stands disposed of.

CM Appl. 35296/2019 (stay)

15. In view the order passed in the appeal, no orders are required to be passed in this application.
16. The application is dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

AUGUST 07, 2019

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